



# PUBLIC NOTICE

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Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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DA 03-169  
Released: January 21, 2003

**PLEADING CYCLE ESTABLISHED FOR ALASCOM, INC. PETITION FOR WAIVER  
OF THE COMMISSION'S RULES REGARDING ITS ANNUAL TARIFF F.C.C. NO. 11**

WC Docket No 03-18

**COMMENTS: February 5, 2003**  
**REPLY COMMENTS: February 18, 2003**

## **I. PETITION FOR WAIVER**

In this public notice, we seek comment on a petition filed by **Alascom, Inc.** (Alascom or Applicant) on January 7, 2003. Specifically, Alascom requests that the Commission waive section 61.58(e)(3) of the Communications Act of 1934, as amended,<sup>1</sup> to allow it to continue offering current rates for its common carrier services without making the required annual rate revision.

Alascom, a wholly-owned subsidiary of AT&T Corp., is required by Commission rules to maintain and refile annually pricing for three rate elements in each of **two** geographic zones.<sup>2</sup> These rates, which are filed in Alascom's FCC Tariff No. 11, are derived from the Commission-approved Cost Allocation Plan (CAP).<sup>3</sup> Alascom asserts that due to the "archaic" CAP requirement, the lack of available data for 2002, and dramatic changes in the Alaska market, it is unable to provide reliable rate revisions for its 2003 tariff. Alascom therefore requests a waiver of the Commission's rules until it can prepare a new CAP model for Commission approval, or until the Commission acts on Alascom's requests for deregulation. Alascom contends that its petition for waiver of section 61.58(e)(3) would service the public interest.

<sup>1</sup> 47 U.S.C. § 214(a); see also 47 C.F.R. § 63.71

*See Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83-1376, Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994); *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83-1376, Final Recommended Decision, 9 FCC Rcd 2191 (1993).

*See Alascom, Inc. Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, 10 FCC Rcd 9823, DA 95-1902, Order (1995); *Alascom, Inc. Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, AAD 94-119, Order, 10 FCC Rcd 4963 (1995).

## II. PROCEDURAL MATTERS

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.’ Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one-sentence or two-sentence description of the views and arguments presented is generally required.’ Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission’s rules.<sup>6</sup>

Interested parties may file comments on or before February 5, 2003 and reply comments on or before February 18, 2003.<sup>7</sup> Such comments should refer to **WC Docket No. 03-18**. Comments should include specific information about the impact of this proposed waiver. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS), or by filing paper copies.<sup>8</sup>

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: “get form <your email address>.” A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at <http://www.fcc.gov/e-file/email.html>.

Parties filing paper copies must file an original and four (4) copies of the comments with the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room TW-A325, Washington, DC 20554. Two (2) copies of the comments should also be sent to the Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 5-A430, Washington, DC 20554, Attention: Rhonda Lien.

Interested parties who wish to file comments via hand-delivery are also notified that the Commission will only receive such deliveries weekdays from 8:00 a.m. to 7:00 p.m., via its contractor, Vistrionix, Inc., located at 236 Massachusetts Avenue, NE, Suite 110,

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<sup>4</sup> See 47 C.F.R. § 1.1200, 1.1206.

See 47 C.F.R. § 1.1206(b)

<sup>6</sup> 47 C.F.R. § 1.1206(b).

47 C.F.R. §§ 1.415, 1.419

<sup>8</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 91-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (1998).

Washington, DC 20002. The **Commission** no longer accepts these filings at **9300** East Hampton Drive, Capitol Heights, **MD 20743**. Please note that all hand deliveries must be held together with rubber bands or fasteners. and envelopes must be disposed of before entering the building. In addition, this is a reminder that the Commission no longer accepts hand-delivered or messenger-delivered filings at its headquarters at 445 12<sup>th</sup> Street, SW, Washington, DC 20554. Messenger-delivered documents (e.g., FedEx), including documents sent by overnight mail (other than United States Postal Service (USPS) Express and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location is open weekdays from 8:00 a.m. to 5:30 p.m. USPS First-class, Express, and Priority Mail should be addressed to the Commission's headquarters at 445 12<sup>th</sup> Street, SW, Washington, DC 20554. The following chart summarizes this information:

| TYPE OF DELIVERY  | PROPER DELIVERY ADDRESS   |
|---|---|
| Hand-delivered paper filings  | 236 Massachusetts Avenue, NE.<br>Suite 110, Washington, DC 20002<br>(Weekdays - 8:00 a.m. to 7:00 p.m.) |
| Messenger-delivered documents (e.g., FedEx), including documents sent by overnight mail (this type excludes USPS Express and Priority Mail) | 9300 East Hampton Drive,<br>Capitol Heights, MD 20743<br>(Weekdays - 8:00 a.m. to 5:30 p.m.)            |
| USPS First-class, Express, and Priority Mail  | 445 12 <sup>th</sup> Street, SW<br>Washington, DC 20554   |

Regardless of whether parties choose to file electronically or by paper, commenters are requested to e-mail their comments to [he FCC, to the attention of Rhonda Lien at [rlien@fcc.gov](mailto:rlien@fcc.gov). Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12<sup>th</sup> Street S.W., CY-B402, Washington, D.C. 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at [qualexint\(Ei@aol.com](mailto:qualexint(Ei@aol.com). In addition, comments should be served upon Applicant.

The application will be available for review and copying during regular business hours at the FCC Reference Center, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC 20554, (202) 418-0270. A copy of the application may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at [qualexinr@aol.com](mailto:qualexinr@aol.com). The application will also be placed on the Commission's Internet site.

For further information, contact Rhonda Lien of the Pricing Policy Division, Wireline Competition Bureau at (202) 418-1520, or via e-mail at [rlien@fcc.gov](mailto:rlien@fcc.gov).

-FCC-

Before the  
Federal Communications Commission  
Washington, D.C. 20554

|   |   |                     |
|---|---|---------------------|
| In the Matter of                        | ) |                     |
|   | ) |                     |
| Alascom Petition for Waiver of the      | ) | WC Docket No. 03-18 |
| Commission's Rules Regarding its Annual | ) |                     |
| Tariff F.C.C. No. 11                    | ) |                     |

**PROTECTIVE ORDER**

Adopted: January 21, 2003

Released: January 21, 2003

By the Deputy Chief, Pricing Policy Division:

1. On January 7, 2003, Alascom, Inc. (Alascom or Applicant) tiled a request for waiver of section 61.58(e)(3) of the Communications Act of 1934, as amended,' to allow it to continue offering current rates for its common carrier services without making the required annual rate revision.' In support of its petition, Alascom filed network usage information for which it seeks confidential treatment.' We authorize examination of the network usage information for which confidential treatment has been sought, subject to compliance with this Protective Order.

2. The information that Alascom marks as "proprietary" describes its network usage and in particular provides a detailed summary of network demand in minutes.<sup>4</sup> Alascom asserts that confidential treatment for this data is appropriate because the market for telephone service in the areas listed in the chart is highly competitive.<sup>5</sup> Alascom states that disclosure of this network usage information would cause Alascom substantial competitive harm because the data would allow competitors to assess Alascom's potential vulnerabilities or other market factors.<sup>6</sup> Alascom contends that it controls access to this data and the data has not been made public.'

<sup>1</sup> 41 U.S.C. § 214(a); *see also* 47 C.F.R. § 63.71

*Alascom, Inc. Request for Waiver of Commission Rule and Orders Requiring Annual Tariff Revision* (filed Jan. 7, 2003) (*Alascom Waiver Request*); *see also Pleading Cycle Established for Alascom, Inc. Petition for Waiver of the Commission's Rules Regarding its Annual Tariff F.C.C. No. 11*, WC Docket No. 03-18, Public Notice (Wireline Competition Bureau January 21, 2003).

<sup>3</sup> *See* Letter from Charles R. Naftalin, Counsel for Alascom, to Marlene H. Dortch, Secretary, Federal Communications Commission (tiled Jan. 7, 2003) at 2 (*Alascom Confidentiality Request*).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

*Id.*

3. Pending a final determination on the issue of confidentiality, this network usage information will be made available for inspection subject to this Protective Order. This Protective Order should facilitate the orderly exchange of relevant information. We therefore adopt this Protective Order to ensure that the documents considered confidential or proprietary by Alascom are accorded the necessary protection.'

4. Subject to compliance with this Protective Order, Authorized Representatives may inspect the data specified above for which Alascom has requested confidential treatment in this proceeding by contacting the following Alascom representative:

Charles Naftalin  
Counsel for Alascom, Inc.  
Holland & Knight LLP  
2099 Pennsylvania Avenue, NW, Suite 100  
Washington, DC 20006  
(202) 457-7040

5. This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from a person and which is privileged or confidential. It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated. This Protective Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

6. Definitions.

a. Authorized Representative. "Authorized Representative" shall have the meaning set forth in Paragraph 12.

b. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. Confidential Information. "Confidential Information" means: (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4); (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information; and (iii) information that the Commission has allowed to be examined off-site and that otherwise complies with the requirements of this paragraph. Confidential Information includes additional copies of and information derived from Confidential Information.

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<sup>8</sup> This Protective Order applies to the material designated as confidential in the *Alascom Confidentiality Request*, as well as material designated as confidential in any subsequent filings in this matter.

d. Declaration. "Declaration" means Attachment A to this Protective Order,

e. Reviewing Party. "Reviewing Party" means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

f. Submitting Party. "Submitting Party" means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

7. Claim of Confidentiality. The Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in Paragraph 6 of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R §§ 0.459 and 0.461, determine that all or part of the information claimed as "Confidential Information" is not entitled to such treatment.

8. Procedures for Claiming Information is Confidential. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

9. Storage of Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court of competent jurisdiction.

10. Access to Confidential Information. Confidential Information shall only be made available to Commission staff, Commission consultants, and to counsel to the Reviewing Parties, or, if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

11. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 10 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 13 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

12. Authorized Representatives shall be limited to:

- a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding, and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services in this proceeding;
- b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; or
- c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

13. Inspection of Confidential Information. Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice (generally not to exceed one business day) during normal business hours.

14. Copies of Confidential Information. The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for preparation and use in this proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

15. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

16. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review) unless otherwise ordered by the Commission or a court of competent jurisdiction, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Protective Order. This provision shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

17. Pleadings Using Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order in the Matter of Alascom, Inc. Petition for Waiver of the Commission's Rules Regarding its Annual Tariff F.C.C. No. 11, WC Docket No. 03-18."

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

18. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

19. Termination of Proceeding. Unless otherwise ordered by the Commission *or* a court of competent jurisdiction, within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made. Authorized representatives shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any Confidential Information contained in



any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 16 and 18 of this Protective Order unless such Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

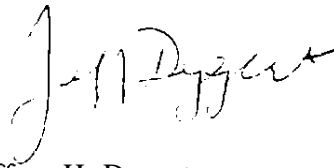
20. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

21. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

22. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

23. Authority. This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. §§ 154(i) and (j), section 0.457(d) of the Commission's rules, 47 C.F.R. § 0.457(d), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291.

FEDERAL COMMUNICATIONS COMMISSION



Jeffrey H. Dygert  
Deputy Chief, Pricing Policy Division  
Wireline Competition Bureau

Attachment **A** to Protective Order

DECLARATION

|   |   |                 |
|---|---|-----------------|
| In the Matter of                        | ) |                 |
|   | ) |                 |
| Alascom Petition for Waiver of the      | ) | WC Docket 03- 8 |
| Commission's Rules Regarding its Annual | ) |                 |
| Tariff F.C.C. No. 11                    | ) |                 |

I, \_\_\_\_\_  
hereby declare under penalty of *perjury* that I have read the Protective Order in this proceeding,  
and that I agree to be bound by its terms pertaining to the treatment of Confidential Information  
submitted by parties to this proceeding. I understand that the Confidential Information shall not be  
disclosed to anyone except in accordance with the terms of the Protective Order and shall be *used*  
only for purposes of the proceedings in this matter. I acknowledge that a violation of the  
Protective Order is a violation of an order of the Federal Communications Commission.  
I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed)\_\_\_\_\_

(name)\_\_\_\_\_

(representing)\_\_\_\_\_

(title)\_\_\_\_\_

(employer)\_\_\_\_\_

(address)\_\_\_\_\_

(phone)\_\_\_\_\_

(date)\_\_\_\_\_